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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands	)	ET Docket No. 95-183 RM-8553
	)	
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz	)	PP Docket No. 93-253

To: The Commission

DOCKET FILE COPY ORIGINAL

PETITION FOR RECONSIDERATION

WinStar Wireless Fiber Corp. ("WinStar"), by its counsel, and pursuant to Sections 1.429 and 1.46 of the Rules and Regulations of the Federal Communications Commission ("Commission"), hereby respectfully submits this Motion for Reconsideration of the Commission's decision to set the filing deadlines in the above-captioned proceeding.[1] In that Order, the Commission set the date for filing comments in the above referenced proceeding as February 12, 1996 and the date for filing reply comments as February 27, 1996. WinStar requests that the Commission reconsider that Order and (1) allow an additional 90 days from the date of WinStar's motion -- until April 11, 1996 to submit comments and (2) extend the period for reply comments to 45 days from 15 days.

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[1] See Order Extending Time, DA 96-15, ET Docket No. 93-183 (released January 15, 1996) ("Order").

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On December 15, 1995, the Commission adopted -- but because of the furlough apparently did not release -- the Notice of Proposed Rule Making which initiated this proceeding.[2] In the NPRM, the Commission proposed to amend Parts 1, 2, 21 and 94 of its rules to provide a channeling plan and licensing and technical rules for fixed point-to-point microwave operations in the 37.0-38.6 GHz ("37 GHz") band. The Commission also proposed to amend the licensing and technical rules for fixed point-to-point microwave operations in the 38.6-40.0 GHz ("39 GHz") band. In the "unreleased" NPRM, the Commission set the comment date as January 16, 1996 (approximately one month after adoption of the NPRM) with replies due two weeks thereafter.

Shortly after the Commission reopened, WinStar filed a "Motion For Extension Of Time."[3] In that motion, WinStar noted that the NPRM was extremely complex and raised numerous and complicated engineering, economic, and legal issues. It observed that the NPRM was over 60 pages with an additional 14 pages of proposed rules and four separate statements by Commissioners. WinStar explained that such issues required further research and analysis before WinStar could submit fully responsive comments. In light of the NPRM's complexity, the amount of time needed to properly respond to the NPRM, and the uncertainty surrounding the

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[2] Notice of Proposed Rule Making and Order, FCC 95-500, ET Docket No. 93-235 (Adopted December 15, 1995) ("NPRM").

[3] Attached as Exhibit A.

15, 1996, and Reply Comments on Thursday, May 30, 1996.

Respectfully Submitted,

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Attorneys For WinStar Wireless Fiber Corporation

Dated: January 19, 1996

NPRM's release, Winstar requested that the Commission extend the date for comments until April 15, 1996, and that the reply period be extended to 45 days -- instead of the two weeks set forth in the NPRM -- until April 15, 1996.

WinStar was not the sole party to request an extension from the Commission. Other parties complaining of the harsh comment period included: Thomas Domencich: Milliwave Limited Partnership; Columbia Capital Corporation; Columbia Millimeter Communications, L.P.; and BizTel, Inc.

On January 16, 1996, the Office of Engineering and Technology, on its own motion, issued an order extending the period for filing comments to February 12, 1996 and the date for filing reply comments until February 27, 1996.[4] Although the Order acknowledged that requests for extensions of time had been filed by WinStar and other parties, the staff predicated the extension on the "the closing of the government due to the furlough and severe weather conditions." In so doing, the staff declined to address WinStar's motion.

WinStar's motion to extend the comment period was grounded largely on the fact that the NPRM raised numerous and significant engineering, economic, and legal issues.[5] WinStar sought an extension in order to have the time needed to research and

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[4] See Order Extending Time, DA 96-15, ET Docket No. 93-183 (released January 15, 1996) ("Order").

[5] Additionally, like other parties, WinStar raised issues concerning the government furlough and weather conditions.

analyze the issues raised in the NPRM. WinStar alerted the Commission to the fact that it was in the process of hiring consulting engineers and had already hired an economic consulting firm. WinStar's claims are meritorious and must be addressed by the staff. To do otherwise would be arbitrary and capricious.

Moreover, the Commission has extended the comments period in similar circumstances.[6] WinStar therefore urges the Commission to address the issues raised in its motion.

CONCLUSION

WinStar respectfully submits that the Commission reconsider WinStar's Motion For Extension Of Time and grant the requested 90 day extension of the Comment date and 45 day extension for Reply Comments as such extensions are reasonable and necessary. WinStar therefore requests that Comments be due on Monday, April

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[6] See Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services, *Order Extending Comment and Reply Comment Period,* DA 95-2090 PR Docket 92-235 (Private Wireless Div., released Oct. 3, 1995) (recognizing failure to consider all arguments for a longer extension period when granting shorter extension request filed by another party).

CERTIFICATE OF SERVICE

I, Patricia M. Kincaid, do hereby certify that on this 19th day of January, 1996, copies of the foregoing "Petition for Reconsideration" were delivered, by hand, to:

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Patricia M. Kincaid

Patricia M. Kincaid

EXHIBIT A

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	)	
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Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands	)	ET Docket No. 95-183 RM-8553
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To: The Commission

MOTION FOR EXTENSION OF TIME

WinStar Wireless Fiber Corp. ("WinStar"), by its counsel, and pursuant to Section 1.46 of the Rules and Regulations of the Federal Communications Commission ("Commission"), hereby respectfully submits this Motion for Extension of Time to file Comments and Reply Comments in the above-styled proceeding.[1] WinStar requests that the Commission (1) allow an additional 90 days from today -- until April 15, 1996 to submit comments and (2) extend the period for reply comments to 45 days from 15 days.[2]

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[1] Notice of Proposed Rulemaking and Order ("NPRM"), FCC 95-500, ET Docket No. 93-235 (Adopted: December 15, 1995). The Comments and Reply Comments dates for responding to this Notice are currently January 16, 1996, and January 31, 1996, respectively.

[2] WinStar believes extending the comment period to April 15, 1996, will allow sufficient time for the NPRM to be published

(continued...)

WinStar provides local and long distance telecommunications services in the United States. WinStar offers its "Wireless Fiber"[3] local telecommunications services on a point-to-point basis in many major metropolitan areas via its digital wireless capacity in the 38.6-40 gigahertz portion of the radio spectrum ("39 GHz"), where it has licenses granted by the Commission. WinStar's Wireless Fiber services deliver high quality voice and data transmissions which meet or exceed telephone industry standards and provide transmission quality equivalent to that produced by fiber optic-based facilities.

The Commission has proposed in this matter to amend Parts 1, 2, 21 and 94 of its rules to provide a channeling plan and licensing and technical rules for fixed point-to-point microwave operations in the 37.0-38.6 GHz ("37 GHz") band. In addition, the Commission has proposed to amend the licensing and technical rules for fixed point-to-point microwave operations in the 38.6-40.0 GHz ("39 GHz") band. As a licensee in the 39 GHz band in many major metropolitan areas, WinStar will be fundamentally affected by the decisions taken in this proceeding. WinStar thus is engaged in a careful evaluation of the various proposals and alternatives set forth in the NPRM.

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[2](...continued)
in the Federal Register and for parties to analyze and prepare their comments.

[3] "Wireless Fiber" is a protected service mark of WinStar.

Without the requested extension, the Commission would receive incomplete Comments and the public interest would not be served. The 62 page NPRM, with an additional 14 pages of proposed rules and four separate statements by Commissioners, contains a complicated amalgamation of engineering, economic, and legal issues. These require further research and analysis before WinStar, and we assume other interested parties, can submit fully responsive Comments.[4] Equally important, there is substantial uncertainty surrounding the availability of the Notice to interested parties.[5] All of these matters recommend a significant extension.

The new engineering specifications proposed for Parts 21 and 94 of the Commission's rules set forth a channeling plan and technical rules which are substantially different from the current paradigm. Informal conversations with the Telecommunications Industry Association ("TIA") and three manufacturers of 37 GHz and 39 GHz equipment indicate that implementation of the NPRM's proposals would require substantial refinement of such equipment. Assessing the feasibility of these refinements and the costs and benefits associated with making

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[4] Winstar understands that other interested parties have already, or will soon be filing motions to extend the period for comments and reply comments in this proceeding.

[5] See Exhibit 1.

them will require a major time commitment.[6] WinStar has concluded that its assessment of the Notice's proposals require it to retain a consulting engineer. WinStar is in the process of interviewing leading engineering firms, and will retain such a firm shortly.

WinStar has retained an economic consulting firm to provide an analysis of the proposed channel cap and interim licensing procedures. It will need additional time to provide a complete analysis of the market in which the 37 and 39 GHz frequencies are used and the policy proposals for licensing and deploying the frequencies.

The NPRM also presents numerous legal issues of substantial importance to existing and prospective licensees and to their customers. For example, the NPRM seeks comment on changing existing and prospective service areas. This could result in the enlargement of existing service areas to the detriment of licensed, but as yet unbuilt, systems. Moreover, it could result in the encroachment of an applicant's system onto a licensee's service area.

Additionally, the NRPM has yet to be published in the Federal Register. Such publication is required by both the Administrative Procedure Act (APA) and the Commission's own rules. Section 553(b) of the APA states in relevant part that

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[6] WinStar has learned that TIA will soon be filing a motion to extend the comments period in this proceeding.

"[g]eneral notice of proposed rulemaking shall be published in the Federal Register." 5 U.S.C. § 553(b); see also Action For Children's Television v. FCC, 564 F.2d 458, 470 (D.C. Cir. 1977) ("In informal rulemaking [pursuant to § 553], an agency must publish notice in the Federal Register."). Likewise, the Commission's rules provide that "[a]ll rulemaking documents are published in the Federal Register." See 47 C.F.R. § 0.445(c).[7] Until proper notice is given -- by publication in the Federal Register -- the comment period may not begin to run. See 5 U.S.C. § 553(c) (mandating that interested parties shall have an opportunity to participate in rule makings "[a]fter notice required by this section" is provided).[8]

WinStar did obtain the NPRM. The NPRM requests comment on more than ninety matters. WinStar has been researching and pursuing the elements needed to properly prepare its comments. Unfortunately, with the Commission closed, those efforts have been hampered by an inability to review licensing records and to secure staff interpretations of certain ambiguities arising in

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[7] See also 47 C.F.R. § 0.411(b)(2) ("Notices of proposed rule making . . . are also published in the Federal Register."); 47 C.F.R. § 1.412(a)(1) ("Notice is ordinarily given by publication of a 'Notice of Proposed Rule Making' in the Federal Register.").

[8] Cf. Adams Telcom, Inc. v. FCC, 997 F.2d 955, 956-57 (D.C. Cir. 1993) (time period for seeking judicial review of documents in rule making proceedings begins after publication in the Federal Register).

the Notice. The additional time requested to comment is necessary to submit meaningful and, we hope, helpful comments.

WinStar also requests that the period for reply comments be extended to 45 days from 15 days. Given the more than ninety requests for comment in the NPRM and the likelihood that a significant number of Comments will be filed in this proceeding, WinStar submits that the additional time almost certainly will be necessary to analyze fully and reply properly to Comments submitted by other parties.

CONCLUSION

WinStar has coordinated this request with virtually all of the major 39 GHz applicants and licensees, and believes that in general they concur with the extension request.[9] WinStar respectfully submits that a 90 day extension of the Comment date and an extension to 45 days for Reply Comments is reasonable and necessary. WinStar therefore requests that Comments be due on

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[9] WinStar has conversed with counsel for: TIA; Advanced Radio Technologies Corporation; BizTel, Inc.; Thomas Domencich; Milliwave Limited Partnership; Columbia Capital Corporation; Columbia Millimeter Communications, L.P.; and Microwave Partners and has been advised that they are not opposed to the instant motion by WinStar.

Monday, April 15, 1996, and Reply Comments on Thursday, May 30, 1996.

Respectfully Submitted,

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Attorneys For WinStar Wireless Fiber Corporation

Dated: January 16, 1996